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From: CN=Tom Hagler/OU=R9/O=USEPA/C=US
Sent: Tue 5/17/2011 11:24:54 PM
Subject: Fw: BDCP EIS Alternatives

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----- Forwarded by Tom Hagler/R9/USEPA/US on 05/17/2011 04:24 PM -----

From: Karen Schwinn/R9/USEPA/US
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Date: 05/17/2011 04:19 PM
Subject: Re: BDCP EIS Alternatives

David and Patti -

Thanks for your recent verbal update summarizing the alternatives that the BDCP Executive Committee is considering for analysis in the NEPA/CEQA document. From that conversation (on May 6), I understand that the Executive Committee would like to finalize the range of alternatives to be analyzed in the BDCP NEPA/CEQA document at their May 19 meeting. You requested that EPA and the Corps identify any questions and concerns about the alternatives before that meeting. I'm sending this to support and supplement yesterday's email response from Mike Jewell of the Corps.

Given the complexity of this process, we thought it would be useful to begin our comments by identifying the status of the environmental analysis for BDCP as it relates to probable Clean Water Act 404 permitting for which the Corps is responsible and EPA maintains an oversight role. As Mike's email mentioned, we have participated with the Corps (as the lead 404 permitting agency) in "pre-application consultations" with the lead federal agencies (FWS, NMFS, BOR) and DWR. The Corps and EPA will occasionally engage in extensive pre-application consultations with probable permit applicants for complex projects to help them consider permitting requirements early in the process and avoid proposing a project that does not qualify for a Clean Water Act Section 404 permit. Although several pre-application discussions have occurred over the last year, it is our understanding that an applicant has not been identified, no application has been submitted to the Corps, and no agreed-upon project definition has been presented to EPA and the Corps. Therefore, for all the reasons Mike's message discussed, we echo the Corps' suggestion that we pursue an MOU to agree on timelines for information requirements, checkpoints and elevation procedures.

Even though your May 5 request for input regarding the range of alternatives is out of step with pursuing a NEPA/404 MOU, we offer a few preliminary observations:

- We have difficulty commenting on alternatives when we don't have an agreed-upon project purpose and have not been provided sufficient information for evaluating project alternatives. In addition, there

seems to be confusion about the BDCP purpose, as described in the recent NAS report (see page 3). And we think there is a disconnect between the proposed alternatives, all of which focus on conveyance, and the stated ecosystem restoration purpose of the BDCP. If ecosystem restoration is one of the major project purposes, we would ordinarily expect to see a more robust discussion of alternatives for that purpose.

- We are encouraged to learn that the range of alternatives considered by the Executive Committee for evaluation in the BDCP NEPA/CEQA document has expanded since the range described in a June 15, 2010 power point presentation developed by the Delta Habitat Conservation and Conveyance Program. Specifically, we understand that the Executive Committee added smaller sized conveyance and a yet-to-be-defined increased outflow alternative for evaluation under NEPA. However, we cannot comment on their potential for meeting CWA permit restrictions or the NEPA requirement for considering a reasonable range of alternatives at the current level of detail. To date we have received: 1) a power point presentation, 2) a table describing operations from February 2010, and 3) a verbal description of the additional 3,000 cfs, "Scenario 6," and increased outflow alternatives from the lead federal agencies.

- We consider water operational scenarios (diversion volume, timing, and frequency alternatives) a major element of each conveyance alternative and note they are the potential source of substantial impact to aquatic resources regulated under CWA Section 404. As we have not seen a detailed description of the operations scenarios or the modeling information associated with these operational scenarios, we express no opinion on their adequacy for 404 NEPA compliance purposes.

The federal agencies are meeting May 25th to discuss 404 issues. It would be useful at that meeting to assess where the lead agencies and regulatory agencies believe the BDCP EIS/EIR process stands and to reconfirm a collective decision on pursuing a NEPA/CWA 404 MOU of some sort.

Thank you for your continued efforts to coordinate these complicated issues within the federal family. I'm sure we'll talk more about this soon..

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Date: 05/05/2011 05:38 PM
Subject: BDCP EIS Alternatives

Karen, Mike - I was just at a BDCP meeting (Executive Committee) at which there was considerable discussion of the alternatives to include in the EIS/EIR. The lead agencies are scheduled to meet Tuesday of next week to try to come to closure on the alternatives, and the Executive Committee expects to hear about a "final decision" on alternatives when they next meet on May 19. (They think the decision is theirs – not the case even though they are paying for it.)

By this email, I am requesting that Patti brief you on where things stand and where they appear to be going. If you have any questions or concerns or want to add to or modify the alternatives in the DEIS, this is the time to bring those forward.

David